

House Bill 23 (COMMITTEE SUBSTITUTE)

By: Representatives Houston of the 170th, Powell of the 171st, England of the 116th, Watson of the 172nd, Corbett of the 174th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, so as to specifically authorize electric membership corporations and their affiliates to provide broadband services; to provide for definitions; to authorize certain financing and partnerships for the provision of broadband services; to prohibit cross-subsidization between the provision of broadband services and an electric membership corporation's natural gas activities or electricity services activities; to provide for findings of an auditor as to cross-subsidization compliance; to permit an action for declaratory judgment for failure to comply with the cross-subsidization prohibition requirements; to prohibit the disconnection of other services provided by an electric membership corporation based upon the failure of a customer to pay for broadband services provided by such electric membership corporation; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, is amended by revising Code Section 46-3-171, relating to definitions relative to electric membership corporations and foreign electric cooperatives, as follows:

"46-3-171.

As used in this article, the term:

- (1) 'Address' means a complete mailing address, including, whenever practicable, street and number or building and floor.
- (2) 'Articles of incorporation' means the original or restated articles of incorporation or articles of consolidation and all the amendments thereto, including articles of merger, and also includes what have been designated by the laws of this state prior to July 1, 1981, as charters.

(2.1) 'Broadband affiliate' means any person which directly or indirectly controls, is controlled by, or is under common control of one or more electric membership corporations and which is used to provide broadband services.

(2.2) 'Broadband services' means a wired or wireless service that consists of the capability to transmit data to and from end users and in combination with such service provides:

(A) Access to the internet; or

(B) Computer processing, information storage, or protocol conversion.

Such term shall include any facilities and equipment associated with such a service and any application or information content to be provided over such a service.

(3) 'Electric membership corporation' or 'EMC' means an electric membership corporation organized under this article or any prior electric membership corporation law of this state, or a corporation which elected, in accordance with the provisions thereof, to be governed by Ga. L. 1937, p. 644, the 'Electric Membership Corporation Act.'

(4) 'Federal agency' includes the United States of America and any department, administration, commission, board, bureau, office, establishment, agency, authority, or instrumentality thereof.

(5) 'Foreign electric cooperative' means a cooperative, nonprofit membership corporation organized under laws other than the laws of this state for the same or similar purposes for which an electric membership corporation may be organized under this article.

(5.1) 'Gas activities' shall have the same meaning as provided in Code Section 46-4-152.

(5.2) 'Gas affiliate' shall have the same meaning as the term 'EMC gas affiliate' provided in Code Section 46-4-152.

(6) 'Insolvent' means that an electric membership corporation is unable to pay its debts as they become due in the usual course of its business or that it has liabilities in excess of assets.

(7) 'Member' means a person who has met the requirements and conditions of membership in an electric membership corporation which are set forth in this article and in the articles of incorporation and bylaws of an electric membership corporation.

(8) 'Person' includes any natural person, firm, association, electric membership corporation, ~~foreign electric cooperative, corporation, either domestic or foreign,~~ business or other trust, partnership, limited liability company, federal agency, state or political subdivision thereof, ~~or body politic, or any other entity recognized by law.~~

(9) 'Service' means any service or commodity which an electric membership corporation may provide under this article for which value is paid."

SECTION 2.

Said title is further amended by revising Code Section 46-3-200, relating to purposes of electric membership corporations, as follows:

"46-3-200.

An electric membership corporation may serve any one or more of the following purposes:

- (1) To furnish electrical energy and ~~service~~ services;
- (2) To assist its members in the efficient and economical use of energy;
- (3) To engage in research and to promote and develop energy conservation and sources and methods of conserving, producing, converting, and delivering energy; ~~and~~
- (4) To provide and operate broadband services directly or indirectly through a contractual arrangement or through a broadband affiliate, contingent upon compliance with Code Sections 46-5-163 and 46-3-200.1; or
- ~~(4)~~(5) To engage in any lawful act or activity necessary or convenient to effect the foregoing purposes."

SECTION 3.

Said title is further amended by adding a new Code section to read as follows:

"46-3-200.1.

(a) No electric membership corporation, broadband affiliate, or gas affiliate shall permit cross-subsidization between its electricity services activities, its broadband services activities, or its gas activities. To prevent cross-subsidization between gas activities and electricity services activities, any electric membership corporation with a gas affiliate shall be subject to Code Section 46-4-153.1. To prevent cross-subsidization between broadband services activities and gas activities and between broadband services activities and electricity services activities, any electric membership corporation or its broadband affiliate that provides or operates broadband services shall:

- (1) Fully allocate all costs of electricity services activities and broadband services activities, including costs for any shared services, between electricity services activities and such electric membership corporation's or broadband affiliate's broadband services activities, in accordance with the applicable uniform system of accounts and generally accepted accounting principles that are applicable to electric membership corporations under federal and state laws, rules, and regulations;
- (2) Not charge any costs of electricity services activities or gas activities to the broadband services customers of such electric membership corporation or its broadband affiliate;

95 (3) Not charge any costs of broadband services activities to the electricity services
96 customers of such electric membership corporation or to the gas activities customers of
97 its gas affiliate; and

98 (4) For the protection and privacy of customer information, not release any proprietary
99 information about any broadband services customers of such electric membership
100 corporation or its broadband affiliate to its electricity services division or any affiliate
101 thereof, any subsidiary of the electric membership corporation, or any gas affiliate
102 without obtaining prior verifiable authorization from such broadband services customers.

103 (b) For each calendar year or part of a calendar year during which the electric membership
104 corporation has provided retail broadband services either itself or through a broadband
105 affiliate, the electric membership corporation shall cause to be conducted an annual
106 financial audit of the electric membership corporation so that an auditor can determine if,
107 during the year subject to audit, the electric membership corporation has complied with the
108 cross-subsidy prohibitions provided in this Code section and the auditor shall include a
109 statement of his or her findings regarding such determination in the final audit report. Such
110 audit shall be conducted by a certified public accountant and may be combined with any
111 other annual audit that the electric membership corporation may conduct.

112 (c) If an electric membership corporation provides retail broadband services itself or
113 through a broadband affiliate, a member of the electric membership corporation in good
114 standing or a customer of the electric membership corporation or its affiliate shall be
115 authorized to bring an action for a declaratory judgment in the superior court of the county
116 in which the principal office of the electric membership corporation is located in order for
117 such court to determine whether the electric membership corporation has failed to comply
118 with the cross-subsidy prohibitions provided in this Code section. Such action shall be
119 brought within the calendar year immediately following the calendar year in which the
120 alleged cross-subsidy occurred. If the court determines that the electric membership
121 corporation failed to comply with the cross-subsidy prohibitions provided in this Code
122 section, such court shall be authorized to enter an order requiring the electric membership
123 corporation to remedy such failure within such period as determined by the court. No such
124 action shall be filed as a class action.

125 (d) An electric membership corporation that provides retail broadband services to the
126 public or has a broadband affiliate that provides retail broadband services to the public
127 shall not disconnect or threaten to disconnect a customer from any electricity services or
128 gas services due to the customer's failure to pay for broadband services and shall not
129 condition the receipt of electricity services or gas services upon the receipt of broadband
130 services or provide more favorable terms for electricity services or gas services in exchange

131 for receipt of broadband services from the electric membership corporation or its
132 broadband affiliate.

133 (e) The provisions of this Code section shall not be deemed to prohibit an electric
134 membership corporation from making or guaranteeing loans or other credit facilities to a
135 broadband affiliate or to any other person, if such loan or credit facility is related to any
136 service that such electric membership corporation may lawfully provide."

137 **SECTION 4.**

138 This Act shall become effective upon its approval by the Governor or upon its becoming law
139 without such approval.

140 **SECTION 5.**

141 All laws and parts of laws in conflict with this Act are repealed.